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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,101	08/17/2000	Bengt A. Carlson	835-007.3	6166

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 07/19/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance
With 37 CFR 1.192(c)**

Application No.

09/641,101

Applicant(s)

CARLSON ET AL.

Examiner

Eric Keasel

Art Unit

3754

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 28 May 2002 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192 (c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENTIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☒ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☒ the brief includes the statement required by 37 CFR 1.192(c) (7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

see attached

NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR

1.192(c)

1. The brief does not contain a correct copy of the claims involved in the appeal of a reissue application in the Appendix (see MPEP 1454).
2. The brief includes a statement that “[t]he claims do not stand or fall together” on page 3, then presents four groups of claims on page 4 without providing a statement indicating whether the claims within these four groups stand or fall together, then there is statement towards the bottom of page 4 indicating that group A and group B claims must “be considered on a claim-by-claim basis” (presumably meaning all 33 claims in Groups A and B are separately contested). What are the groups of claims that are being appealed and what claims stand or fall with what other claims? The arguments are not commensurate in scope with Group A claims standing or falling together or with Group A claims all being separately contested. Appellant must clearly state what the Groups are, whether the claims within the Groups stand or fall together, and must present arguments commensurate in scope with the statement that all claims within the Group stand or fall together. See 37 CFR 1.192(c)(7). MPEP § 1206.
3. Appellant is required to comply with provisions of 37 CFR 1.192(c). To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 1.192(c) within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.

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4. Appellant argues that “[i]f the Examiner disagrees with the Applicants’ [sic] position as to the presence of supporting disclosure in Applicants’ [sic] underlying patent for certain of the limitations found in Applicants’ [sic] copied claims, it is incumbent upon the Examiner to suggest alternative counts. See generally the MPEP at 2305.” The examiner disagrees. There is no such incumbency on the examiner stated in MPEP 2305 or elsewhere. In fact, MPEP 2305 specifically states:

The question of what claim or claims to suggest in the interfering application is one of great importance, and failure to suggest claims that will clearly define the matter in issue leads to confusion and to prolongation of the contest.

How can the matter in issue be clearly defined at this point when the examiner and the appellant can not even agree as to what is clearly defined and supported in the disclosure of the application?

5. To simplify matters, the examiner is canceling the art rejections under 35 USC 102 and 35 USC 103. For future reference, the properness of a final rejection is a matter that should be petitioned, and not appealed.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (703) 308-6260. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Henry C. Yuen can be reached on (703) 308-1946. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 305-3588 for regular communications and (703) 305-3588 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.



Lesley D. Morris
Primary Examiner

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June 21, 2002